

1 HONORABLE RICHARD A. JONES
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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 CAROLYN KENNEY,

9 Plaintiff,

10 v.

11 EXPERIAN INFORMATION
12 SOLUTIONS, INC., et al.,

13 Defendants.

CASE NO. C08-1103RAJ
ORDER

14 This matter comes before the court on Plaintiff's motion to amend her complaint.
15 Dkt. # 48. The court considers the motion on an ex parte basis, because there are no
16 defendants in this action. The court DENIES the motion for the reasons stated below.

17 The court's most recent order (Dkt. # 46), issued January 4, 2010, dismissed
18 claims against Associated Credit Services, Inc. ("ACS1"), the last remaining Defendant
19 in this action. The court did so because Plaintiff had not responded to ACS1's contention
20 that it had been erroneously named as a Defendant, and had no role in the collection of
21 the disputed debt in this action.

22 The court also ordered Plaintiff to inform the court whether it should dismiss this
23 action, or whether she intended to pursue Associated Credit Service ("ACS2"), who
24 ACS1 contended was the proper Defendant. In the event she chose the latter route, the
25 court ordered her to explain why she had not timely moved to amend her complaint and
26 serve ACS2, when the evidence showed she had declined to do so despite notice in
27 August 2008 from ACS1's counsel that she had named the wrong Defendant.

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1 Plaintiff has not complied with the court's order. She admits that she did not
2 respond to ACS1's motion to set aside the default against it, and admits that the fault for
3 doing so was her own. She contends that it was not proper to dismiss ACS1, but she has
4 not moved for reconsideration of the court's order, and the time to do so has expired. She
5 is thus mistaken in her belief that ACS1 remains a party to this action.

6 At the same time, she requests leave to amend to assert claims against ACS2. She
7 admits that she cannot be certain whether ACS1 or ACS2 is the proper Defendant, and
8 hopes to use the discovery process to unravel that issue. She does not, however, offer
9 any explanation for why she did not take these steps in August 2008 or shortly thereafter,
10 when counsel for ACS1 informed her of her alleged error. The court finds no explanation
11 for this lengthy delay, despite ordering her to provide one.

12 The court accordingly rules as follows. The court DENIES Plaintiff's motion to
13 amend. Dkt. # 48. If Plaintiff wishes, she may file a new motion to amend, and she may
14 include both ACS1 and ACS2 as Defendants in her proposed amended complaint. If she
15 does so, however, she must provide justification for her lengthy delay in responding to
16 evidence that ACS2, not ACS1, was the proper defendant. If she moves to amend
17 without doing so, the court will deny that motion as well, and will dismiss this action
18 with prejudice. Plaintiff must file the new motion to amend no later than February 22,
19 2010. If she fails to do so, the court will dismiss this action with prejudice for failure to
20 prosecute. The court has already warned Plaintiff once to either justify her long delay in
21 pursuing this action, or face dismissal.

22 DATED this 9th day of February, 2010.

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26 The Honorable Richard A. Jones
27 United States District Judge
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